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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,985	10/19/2001	John H. Schneider	ITW-13111	5951
23566	7590	10/06/2003	EXAMINER	
OSTRAGER CHONG & FLAHERTY LLP			TRUONG, THANH K	
825 THIRD AVE			ART UNIT	
30TH FLOOR			PAPER NUMBER	
NEW YORK, NY 10022-7519			3721	

DATE MAILED: 10/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/042,985

Applicant(s)

SCHNEIDER ET AL.

Examiner

Thanh K Truong

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23, 33 and 40-55 is/are pending in the application.
- 4a) Of the above claim(s) 12, 23, 51 and 53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13-22, 33, 40-50, 52, 54 and 55 is/are rejected.
- 7) ☒ Claim(s) 46 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 October 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to applicant's amendment, Paper No. 9, received on September 12, 2003.
2. Applicant's cancellation of method claims 24-32 and 34-39 in Paper No. 9 is acknowledged.

Election/Restrictions

3. Applicant's election with traverse of Group I, claims 1-23, 33 and 40-47 in Paper No. 7 is acknowledged. The traversal is moot in view of the cancellation of the method claims (24-32 and 34-39).

The requirement is still deemed proper and is therefore made FINAL.

4. Applicant's election without traverse of Species 1, the embodiment shown in Figures 1 and 2; claims 1-11, 13-22, 33, 40-50, 52, 54 and 55, in Paper No. 7 is acknowledged.
5. Claims 12, 23, 51 and 53 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

Drawings

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: reference number 48 in Figure 2. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

7. The drawings are objected to under 37 CFR 1.83(a) because they fail to show in Figure 2 the line of weakness 22 as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

8. Claim 46 is objected to because of the following informalities: the recitation: "said line of weakness is formed by laser scoring" is found to be irrelevant to claimed subject matter. In a product claim, the method of making the product is not germane to the issue of patentability of the bag itself.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1-11, 22, 40-47 and 54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, lines 15-17 recites "said first line of weakness lies ... which is lower than a top of said slider", but in the specification, lines 26-27 recited that "the line of weakness 22 is located at an elevation lower than the bottom of the slider 26". Thus, the recitation in lines 15-17 of claim 1 rendered the claim indefinite.

Claims 11, 22 and 54, the phrase "integrally formed" is vague and indefinite because, it is unclear which of the embodiment is the applicant referring to – the embodiment of figure 2 (Species 1) or the embodiment of figure 5 (Species 4).

Claims 40-44 and 48, the claimed limitation "line of weakness" is recited having one end at one elevation and the other end at another elevation, for example, in claim 41, lines 7-10, recites "... a first line of weakness that begins ... at a first elevation above a top edge of said zipper and continues to a second elevation below a top edge of said zipper", and in claim 44, lines 2-6, recites "second line of weakness that begins at or near ... first elevation ... second elevation ... third elevation". The claims are vague and indefinite because they contradict to the Applicant's disclosure. Page 7, lines 23-27 in the specification, recited "the line of weakness 22 is preferably straight and generally parallel to the zipper line, extending horizontally from one side edge of the package to the other. As shown in FIG. 1, the line of weakness 22 is located at an elevation lower than the bottom of the slider 26".

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1-11, 13-22, 33, 40-50, 52, 54 and 55 are rejected under 35 U.S.C. 102(e) as being anticipated by Buchman (6,273,607).

Buchman discloses a package (figures 1, 2 & 4) comprising: a receptacle having a mouth at an upper end; a flexible zipper 20 attached to the mouth and comprising first and second fastener strips 22, 24; a slider 30 movably mounted to the zipper for alternately opening or closing portions of the first and second fastener strips; and an enclosed header 19 enclosing the zipper and the slider; the enclosed header comprises first and second side edges and first and second walls each extending from the first side edge to the second side edge (figure 2); the side edges comprising a first and second tear notches 33, 37 formed therein, walls of the enclosed header comprising the line of weakness 38 lies in an elevation below the slider.

Figures 1 and 4 clearly express that first and second lines of weakness are overlapping (column 5, lines 14-20), and the line of weakness is formed by laser scoring (column 4, line 56).

Reference numbers 33 and 37 (figure 1) shown a combination of tear notch and slit (column 6, lines 1-2), and the slit traversing a range of elevation encompassing a first elevation near an elevation of the first tear notch and a second elevation near an elevation of the first portion of the first line of weakness (column 4, lines 20-24).

Buchman further discloses that slit 33 and 37 "can be any shape or size desired". For example, a slit that is a triangular shape (column 4, lines 13-15). This clearly anticipated the slit that is inclined at an angle in a range of 30 to 90 degrees relative to a line of the zipper, and the lower point of the slit being further away from the closest one of the first and second side edges than is the upper point of the first slit.

The enclosed header comprises a seal for sealing the first and second walls together (figure 2, column 5, lines 63-64).

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Applicant's attention is drawn to the Buchman (6,290,390). Buchman '390 discloses a package comprising tear notch and slit 33; the embodiment of an obvious variation of the claimed invention.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is (703) 605-0423. The examiner can normally be reached on Mon-Thurs from 8:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 872-9301.



Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700

tkf
September 26, 2003